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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/149,719	06/10/2005	Michele Covell	82212824	3021

22879 7590 04/10/2017
HP Inc.
3390 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528-9544

EXAMINER

KASSIM, KHALED M

ART UNIT	PAPER NUMBER
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2468

NOTIFICATION DATE	DELIVERY MODE
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04/10/2017

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHELE COVELL, SUMIT ROY,
JOHN ANKCORN, and FREDERIC HUVE

Appeal 2015-006798
Application 11/149,719
Technology Center 2400

Before CARL W. WHITEHEAD JR., DENISE M. POTHIER, and STEVEN
M. AMUNDSON, *Administrative Patent Judges*.

POTHIER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–44. App. Br. 4.¹ On June 20, 2012, another Board panel reversed the Examiner's decision to reject claims 1–44. The claims have since been amended. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Throughout this opinion, we refer to (1) the Final Action (Final Act.) mailed November 5, 2014, (2) the Appeal Brief (App. Br.) filed February 5, 2015, (3) the Examiner's Answer (Ans.) mailed May 18, 2015, and (4) the Reply Brief (Reply Br.) filed July 14, 2015.

We affirm.

The Invention

Appellants' invention relates to overcoming problems that arise when presenting multiple media streams (e.g., de-synchronization video and audio) concurrently within a thin device, including when a user interactively controls the playback rate of a presentation. *See* Spec. 12:15–28, 14:8–23, 15:4–26. For example, media stream generating system 120 can implement one of three alternatives to overcome these problems (e.g., decoupled time-scale modification (TSM)) for interactively controlling streaming media to thin device 110. *See id.* at 15:29–17:8, Figs. 1, 5.

Claim 1 is reproduced below with emphasis:

1. An interactive media response method comprising:
 - determining display capabilities of a thin device;
 - generating media at a media stream generation system, wherein said media stream generation system provides interactive control of said generated media by utilizing a software application resident in said media stream generation system to modify said generated media subsequent to said media generation, and *wherein said media is generated with time scale modification to provide said interactive control*, said generated media comprising:
 - a visual prompt for display on said thin device based on said determination; and
 - an audio prompt for presentation on said thin device;
 - sending said visual prompt and said audio prompt to said thin device, wherein said sending of said visual prompt and said audio prompt are synchronized based on a correlation of said visual prompt and said audio prompt; and
 - displaying said visual prompt on said thin device.

The Rejections

The Examiner relies on the following as evidence of unpatentability:

Whitham	US 2003/0009281 A1	Jan. 9, 2003
Lee	US 7,089,313 B2	Aug. 8, 2006
Choi	US 2007/0168188 A1	July 19, 2007
Smith	WO 99/31856	June 24, 1999

Wolfgang Mueller et al., *Interactive Multimodal User Interfaces for Mobile Devices*, Procs. of the 37th Hawaii Int’l Conf. on Sys. Sciences 1–12 (2004).

Claims 1–5, 11–15, 22–26, 33–37, and 39–43 are rejected under 35 U.S.C. § 103(a) as unpatentable over Smith, Lee, Whitham, and Choi. Final Act. 2–28.

Claims 6–10, 16–21, 27–32, 38, and 44 are rejected under 35 U.S.C. § 103(a) as unpatentable over Smith, Lee, Whitham, Choi, and Mueller. Final Act. 28–34.

THE OBVIOUSNESS REJECTION OVER SMITH, LEE,
WHITHAM, AND CHOI

Regarding independent claim 1, the Examiner finds that Smith, Lee, and Whitham teach many of its limitations, including the step of “said media stream generation system provides interactive control of said generated media by utilizing a software application.” Final Act. 2–6. The Examiner turns to Choi in combination with the Smith/Lee/Whitham system to teach the “media is generated with time scale modification to provide said interactive control.” Final Act. 6.

Appellants argue each of Smith, Lee, Whitham, and Choi fails to teach the recited “media is generated with time scale modification to provide said interactive control.” App. Br. 9–12; Reply Br. 2. Appellants admit Choi teaches “a time-scale modification” but assert the reference does not describe generating the media with this modification “to provide said interactive control” as recited. *Id.* at 11.

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Smith, Lee, Whitham, and Choi collectively would have taught or suggested “generating media at a media stream generation system . . . wherein said media is generated with time scale modification to provide said interactive control”?

ANALYSIS

Based on the record before us, the Examiner has not erred in rejecting representative, independent claim 1 as proposed. The limitation in dispute calls for “generating media at a media stream generation system . . . wherein said media is generated with time scale modification to provide said interactive control.”² Concerning this recitation, many of Appellants’ arguments attack each cited reference individually without considering what the combination teaches as whole. App. Br. 9 (stating “neither Smith, Lee,

² Independent claims 11, 22, 33, and 39 have similarly disputed language to claim 1. These claims are not separately argued. App. Br. 9-12. We select claim 1 as representative.

nor Whitham teach[es], describe[s], or suggest[s]” the above-quoted limitation), 11 (stating the interactive multimedia tour guide “as disclosed in Whitham, does not teach, describe, or suggest” the disputed language) (bolding omitted), 12 (stating “Choi . . . does not specifically teach, describe, or suggest” the disputed claim language); Reply Br. 3 (stating “neither Choi nor Whitham discloses using time scale modification to provide interactive control”) (bolding omitted).

We find Appellants’ arguments unavailing. In particular, Choi “must be read, not in isolation, but for what it fairly teaches in combination with the prior art as a whole.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). That is, the Examiner determines the combination of Smith, Lee, and Whitham teaches generating media at a media stream generation system and the generation system provides interactive control of the generated media by using a software application. Final Act. 4–6 and Ans. 3 (both citing Whitham ¶¶ 2, 18, 27, 30, 40, Abstract). The Examiner turns to Choi *in combination* with the Smith/Lee/Whitham system to teach the generated media “with time scale modification” that “provide[s] said interactive control” as recited. Final Act. 6–7 and Ans. 4 (both citing Choi ¶¶ 9, 13, 14); *see also* Ans. 4 (stating “since Whitham disclose[s] providing interactive control for media generated media and Choi disclose[s] using time-scale modification for the media, *the combination of the prior art applied* discloses the argued limitation”) (italics added).

As such, we disagree that the rejection “addresse[s] claim 1 in a piecemeal fashion” (Reply Br. 2) or that “the only source for the [the disputed] subject matter is the claims themselves” (Reply Br. 3). Rather, the Examiner has considered the claim as a whole and has applied teachings of

the references *collectively* in concluding the combination yields the argued recitation of “generating media at a media stream generation system . . . wherein said media is generated with time scale modification to provide said interactive control.” Final Act. 4–6; *see also* Ans. 3–4.

Appellants also contend the Final Action does not “explain the differences between the asserted art and Appellants’ claimed features.” App. Br. 9. We disagree. For example, the Examiner finds “Smith is silent about how a telecommunication system determines display capabilities of a thin device and then generates content based on such determination” (Final Act. 3) and turns to Lee in combination with Smith to teach the noted, claim features (*id.* at 3–4). As another example, the Examiner finds the “Smith-Lee combination does not teach [the] media stream generation system provides interactive control of said generated media by utilizing a software application resident in said media stream generation system to modify said generated media subsequent to said media generation” (*id.* at 4) (emphasis omitted) and turns to Whitham in combination with the Smith/Lee system to teach the noted, claim features (*id.* at 5–6).

Appellants further argue that the “Office Action fails to explain why these differences would have been obvious to one of ordinary skill in the art.” App. Br. 9. We disagree. The Examiner explains that one skilled in the art would have “considered” (e.g., an ordinarily skilled artisan would have found obvious) combining Lee’s teaching of determining display capabilities and supporting such capabilities in remote operation with Smith in order “employ [such capabilities] in Smith’s multi-modal user interface” environment. Final Act. 3. The Examiner also states “[i]t would have been obvious for one of ordinary skill in the art at the time of the invention to

combine the teachings of Smith, Lee, and Whitham in order to manage communication between multiple electronic devices [Lee: Col. 1 / lines 43-44] and to leverage the possibility of modifying the tour while en route by using the interactive multimedia tour guide [Whitham: 0027].” *Id.* at 6.

For the first time in the Reply Brief, Appellants contend that the rejection presented by the Examiner uses “hindsight” (Reply Br. 3), does not “provide a sufficient rationale for the proposed modification” (*id.*), and “the provided rationale is merely circular logic” (*id.* at 4) (bolding omitted). Such arguments are waived. *See* 37 C.F.R. §41.41(b)(2) (“[a]ny argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown.”)

In any event, we are not persuaded. As noted above, the Examiner provides several reasons with a rational underpinning for combining the references. *See* Final Act. 6. Granted, at one point, the Examiner states that “[o]ne skilled in the art would have employed Choi[’s] time scale modification method to generate media and provide the interactive control,” but further explains that the proposed combination also “provide[s] various useful time-scale modification functions to the system.” *Id.* To elaborate, one skilled in the art would have recognized to apply Choi’s time-scale modification (TSM) technique to the Smith/Lee/Whitham method, including during the steps of generating media at a media stream generation system that provides user interactive control, in order to maintain reproduction time accurately and to avoid lip sync problems (e.g., useful TSM functions). *See* Choi ¶ 9, *cited in* both Final Act. 6 and Ans. 3. The record therefore reflects

reasons to combine the teachings of the cited references supported by articulated reasoning with some rational underpinning to justify the obviousness conclusion.

For the foregoing reasons, Appellants have not persuaded us of error in the rejection of independent claim 1 and claims 2–5, 11–15, 22–26, 33–37, and 39–43 not separately argued (App. Br. 7–12).

THE REMAINING OBVIOUSNESS REJECTION

Claims 6–10, 16–21, 27–32, 38, and 44 are rejected under 35 U.S.C. § 103(a) as unpatentable over Smith, Lee, Whitham, Choi, and Mueller. Ans. 28–34. For this rejection, Appellants contend the claims are patentable because they include the recitations of independent claims 1, 11, 22, 33, or 39 (App. Br. 12) as well as repeat some of the arguments presented for claim 1 (*id.* at 12–13). As noted above, we are not persuaded.

Accordingly, Appellants have not persuaded us of error in the rejection of claims 6–10, 16–21, 27–32, 38, and 44.

DECISION

We affirm the Examiner’s rejection of claims 1–44 under § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED